

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 398 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES
2. To be referred to the Reporter or not ? YES

J

3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO
5. Whether it is to be circulated to the Civil Judge ? YES

AMRUTLAL PRANLAL PNACHAL

Versus

PRAHLADBHAI RAJARAM METHA

Appearance:

MR PS CHAMPANERI for Petitioner
MR AH MEHTA for Respondent No.2
MR KC SHAH ADDL. PP for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 09/12/96

ORAL JUDGEMENT

Amrutlal Pranlal Panchal by this Criminal Revision Application has challenged the impugned judgment and order dated 5th November, 1996 rendered in Criminal

Appeal No. 17 of 1996 passed by the learned Sessions Judge, Kaira at Nadiad, wherein the Order of conviction and sentence passed against him under Section 630 of the Companies Act by the learned JMFC, Nadiad came to be confirmed.

2. To briefly narrate few relevant facts of the case, petitioner herein was serving in New Shorrock Mills, Nadiad in Engineering Department and was given a company quarter as an employee. Now as per the terms of the contract this quarter was required to be vacated on termination of the services of the employee or on his resignation from the job, and accordingly, was further required to hand over possession of the same to the company. In the instant case, since the accused left his services on 25th February, 1989 his right qua the terms and conditions to be in possession of the company quarter in question allotted to him came to an end. Now despite this glaring fact, petitioner quite illegally held on the possession and as a result, the Company was constrained to file a complaint against the petitioner under Section 630 of the Companies Act. This came to be registered as Criminal Case No. 2125 of 1989 in the court of learned JMFC, Nadiad wherein by the judgment and order dated 29th June, 1996 he came to be convicted for the alleged offence and was sentenced to pay fine of Rs. 500/= and in default to undergo further SI for seven days alongwith further order directing him to hand over the possession of the premises in question. Feeling aggrieved by the impugned judgement and order, petitioner filed an appeal, the same being Criminal Appeal No. 17 of 1996 before the Sessions Court, Kaira at Nadiad. This came to be dismissed by judgement and order dated 5th November, 1996 giving rise to the present Criminal Revision Application as stated above in para-1 of this judgment.

3. Heard learned advocates appearing for the respective parties.

4. It is not disputed by Mr. Chamapaneri, learned advocate for the petitioner that (i) the petitioner - A.P Panchal was an employee of New Shorrock Mills, Nadiad. (ii) he was put in possession of Company premises by virtue of he being the employee of the Company only. (iii) after he tendered his resignation on 25/12/88, he was not entitled to hold on his possession and still he has continued to occupy the company premises. (ii) It also cannot be disputed that such persons are liable to be prosecuted under Section 630 of the Companies Act and on case being proved are liable to be convicted and sentenced. Under the circumstances, there can not be any

hesitation in holding that both the trial Court and the Sessions Court have rightly recorded the order of conviction and sentence against the petitioner-accused.

5. Mr. Chapaneri, learned advocate appearing for the petitioner having failed to persuade the Court on legal contentions has prayed for showing some leniency to the poor worker. Now, these are the cases wherein there is indeed no question or scope for the court to exercise any mercy jurisdiction. When the case of one greedy is pitted against the case of a needy, that is to say the requirement of one worker against the another one, whose right has come to an end, the scale of justice must ultimately and invariably needs to be tilted and weighed in favour of the needy, as not to do so would be putting premium over the wrong committed by greedy and dishonest person. No court in name of mercy should provide illegal protection to the accused. What indeed is the fault of that needy employee of the company standing in the queue requiring immediate shelter ??? Is he not entitled to lawful mercy ? Infact, while exercising mercy concerned employee knows quite full-well that on a particular day his right to occupy and stay in the company premises comes to an end and accordingly should make alternative arrangements in due time ! Not only that but year in advance of retirement, or otherwise, as the case may be, the company should remind the concerned employee of due date of vacating the premises and to make alternative arrangements. This is simply and just to remind the worker and not by way of any legal obligation upon the company. No body has a right to cloud or eclipse the right of another even in the name of mercy ! Alternative accommodation despite best of efforts not available is hardly a ground on the basis of which illegal occupation can be permitted to be further extended save and except by the circumstances where the company have no compunction to immediately get vacated the premises in question.

6. While parting, in overall interests of justice, all the learned Magistrates and Sessions Courts of the State, where cases under section 630 of the Act are pending, they are hereby directed to see to it that under some illegal and unjust cover and protection of the court, trial and/or appeal or the revision, as the case may be is not unnecessarily protracted to the ultimate prejudice and disadvantage of other company employee waiting for his turn for occupation of premises.

7. In above view of the matter, it is indeed not possible for this Court to accede to the request of Mr.

Chapaneri to take technical and lenient view in the matter, and thereby to admit and allow this matter. Any way, since December is rushing to an end within three weeks, and further since the learned counsel Mr. Arun Mehta appearing for the complainant-Company was graceful enough not to have any objection if the occupation of the quarter is extended till 15th January, 1997, this Court subject to little modification viz., that the petitioner shall file an undertaking in this regard, granted time to vacate the company premises by 15th January, 1996. The petitioner shall file such an undertaking within a week before this Court. It is further made clear that in the event of breach of undertaking, the petitioner shall be straightway liable to contempt of Court. With these observations, this Criminal Revision Application fails and the same stands dismissed at the admission stage.

Pt*